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Filed Dec. 3 1877

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~359~~ 98

WILLIAM DENNISON ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA, AND THE FIRST NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANTS,

vs.

COLUMBUS ALEXANDER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 22, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 359.

WILLIAM DENNISON ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA, AND THE FIRST NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANTS,

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INDEX.

	Original.	Print.
Petition for appeal	1	1
Allowance of appeal	6	3
Bill of complaint	8	3
Exhibit A (notice of sale)	16	7
No. 2 (notice of assessment)	19	9
No. 3 (stub of certificate)	20	10
Answer of Commissioners	21	10
Answer of First National Bank New York	31	14
Replication	42	19
Agreement as to testimony	42	19
Affidavit of John C. Harkness	43	20
Affidavit of Adolf Cluss	46	21
Order referring cause to general term	59	28
Agreement as to bill and answer	59	28
Final decree	60	29
Certificate of clerk	60	29

1 COLUMBUS ALEXANDER
vs.
WILLIAM DENNISON, SETH L. PHELPS AND John H. Ketcham, Commissioners of the District of Columbia, and The First National Bank of the city of New York.

In equity. Cause decided at the last (January) term of the supreme court of the District of Columbia, eq., doc. 14, No. 4094, of said court.

To the honorable the chief justice and associate justices of the Supreme Court of the United States or one of them:

The petition of the Commissioners of the District of Columbia and The First National Bank of New York respectfully represents:

That Columbus Alexander, a citizen of the District of Columbia, on the fifth day of January, 1875, filed a bill in equity against the Commissioners of the District of Columbia and The First National Bank to restrain the sale of real estate owned by him, known as part two (2) of square two hundred and eighty-six (286), fronting on New York avenue, in the city of Washington. The lot had been advertised for sale by the Commissioners of the District for improvements made by the late board of public works on New York avenue, on a certificate of in-
2 debtedness which had been issued by that board and transferred for a valuable consideration to The First National Bank. In case of non-payment of such certificates, the act of the legislative assembly, approved August 10, 1871, authorized a sale on request of the holder, and this mode of sale had been ratified or sanctioned by Congress.

The complainant alleged irregularities in the tax, that the mode of collection was contrary to law, and that the sale would cast a cloud upon his title, and that the cost of the improvements had been assessed and collected from the United States, and other matters.

These various allegations were denied by the defendants or modified, and the question of the jurisdiction of equity raised in the answer to the bill.

A bill had been filed on the day of by the complainant (and others) in relation to the same property to restrain the issuing of the certificate; but the court decided that this could not be done, and it was after this decision that the present bill was filed, in which the court directly, if not substantially, revers-s its opinion. The court was
3 divided; three (3) of the judges sustaining the injunction and two (2) being opposed to it. Among the errors of the court are the following:

1. The court erred in holding that the court of equity had jurisdiction to restrain the enforcement and collection of the tax.

2. The court erred in holding that the remedy for irregularities or errors was not by certiorari, but by injunction.

3. The court erred in holding that the cost of the improvement had been reimbursed to the District by Congress.

4. The court erred in holding that there was no mode of assessment provided by the act of the legislative assembly of August 10, 1871.

5. The court erred in holding that the collection of the certificate for non-payment of the tax could not be enforced by sale of the property against which it was issued.

6. The court erred in holding that the proceedings of the board of

public works under acts of Congress and acts of the legislative assembly were null and void.

7. The court erred in holding that the complainant was under no obligation to pay any part of the tax or certificate as a condition precedent to the institution or maintenance of his suit.

4 8. The court erred generally both as respects the law and the facts.

And your petitioner, the Commissioners of the District further represent that apart from the errors specified, the case involves largely the resources and revenues of the District, both as respects certificates already issued and transferred bona fide to third parties for the benefit of the District as well as respects improvements which have been recently completed and certificates which should now be issued, and that the District will be largely and seriously embarrassed in its operations and revenues by the decision of the court.

And your petitioner, the bank, represents that this certificate as well as others to a large amount, viz., several hundred thousand dollars, were purchased by it at the special request of the District at a small percentage of discount in order to enable the District to carry on its operations and government, and that it is largely interested in a correct decision of the facts and principles of law involved in this case.

5 And your petitioners further represent that the amount assessed against the complainant, and for which a certificate was issued, and which he has neglected and refused to pay, was for a sum less than four hundred and more than one hundred dollars, and that this sum would not authorize an appeal in the ordinary form to the Supreme Court of the United States.

Wherefore as provided in section 706 of the Revised Statutes of the United States (page 132), your petitioners pray that an appeal be allowed to the Supreme Court of the United States, and that an order be made by the clerk of the supreme court of the District of Columbia to allow an appeal as provided in said section of the Revised Statutes.

W. DENNISON,
J. H. KETCHAM,
S. L. PHELPS,
Commissioners, D. C.
WILLIAM BIRNEY,
Solicitor for the District of Columbia and the Commissioners D. C.
GEO. E. BAKER,
Att'y in fact for First National Bank.
WILLIAM A. COOK,
Att'y for 1st Nat. Bank, New York.

(Indorsed:) 4094. Eq. doc. 14. Columbus Alexander vs. Dist. of Columbia. Petition of defendants to the S. C. U. S. for allocatur. Filed Apr. 27, 1877. R. J. Meigs, cl'k.

6 Order of Hon. Morrison R. Waite, Chief Justice, to allow appeal from the supreme court of the District of Columbia to the Supreme Court of the United States in the case of Columbus Alexander vs. William Dennison, Seth L. Phelps, and John H. Ketcham, Commissioners of the District of Columbia, and the First National Bank of the city New York.

Equity docket No. 14. No. 4094. Decided at January term of said supreme court of the District of Columbia.

To R. J. MEIGS, Esq.,
Clerk of the Supreme Court of the United States for the District of Columbia:

And now, to wit, on this third day of May, in the year of our Lord one thousand eight hundred and seventy-seven, I, Morrison R. Waite, Chief Justice of the Supreme Court of the United States, having considered the petition of William Dennison, Seth L. Phelps, and John H. Ketcham, Commissioners of the District of Columbia, and the First National Bank of the city of New York, to me addressed in the above cause, and the errors therein assigned, and having inspected the record of the proceedings of the said supreme court of the District of Columbia in the said cause, and being of the opinion that the errors assigned
7 involve questions of law of such extensive interest and operation as to render the final decision of them by the Supreme Court of the United States desirable, and that an appeal from the final decree of said supreme court of said District ought to be allowed, do, by these presents, order and direct that said appeal be allowed upon the terms and conditions prescribed by law in cases of appeal from said supreme court of the District of Columbia to said Supreme Court of the United States.

In witness whereof I have hereunto affixed my official signature on the day and year above written.

M. R. WAITE,
Chief Justice S. C. U. S.

(Indorsed:) 4094. Eq. doc. 14. Columbus Alexander vs. District of Columbia. Allowance of appeal by Chief Justice of Supreme Court. 3rd M. Co. Tp. 80. Filed May 3, 1877. R. J. Meigs.

8 In the supreme court of the District of Columbia. In equity.

COLUMBUS ALEXANDER
vs.
WILLIAM DENNISON, HENRY T. BLOW, J. H. Ketcham, Commissioners of the District of Columbia, and The First National Bank of the city of New York.

To the honorable judges of the supreme court of the District of Columbia, in equity:

Humbly complaining, sheweth to your honors, your orator, Columbus Alexander, that he is a citizen of the United States, resident in the District of Columbia, and the owner of certain real estate therein situated, known as part 2 of square 286, thus described, to wit, "Beginning at a point on New York avenue 14 feet 4 inches westerly from the southeast corner of said lot; thence westerly with the line of New York avenue 14 feet 4 inches; thence northerly by parallel lines of that width, to rear of said lot."

That said William Dennison, Henry T. Blow, and J. H. Ketcham, Commissioners of the District of Columbia, have advertised your orator's said lot as above described for sale, on the application, as alleged in said advertisement, of the First National Bank of the city of New York, which "claims to be the holder" of a certain certificate of indebt-

edness issued by the late board of public works of this District for the sum of $170.36, bearing interest at ten per cent. per annum from the date of its issue, namely, the 2nd day of September, 1872, which certificate of indebtedness purports to be a lien upon your orator's
9 said property for the non-payment of an assessment made thereupon for special improvements by said board of public works, for the alleged purpose of enforcing which lien the said William Dennison, Henry T. Blow, and J. H. Ketcham, Commissioners as aforesaid, have advertised your orator's said lot to be sold at public auction on this day, the fifth day of January, 1875, between the hours of 12 m. and 5 p. m., all of which will more fully and at large appear by reference to said advertisement, clipped from the columns of the Daily Chronicle, a daily newspaper of this city, and herewith filed, marked Complainant's Exhibit A, and prayed to be taken as part of this bill of complaint.

And whereas it is alleged in said advertisement that the board of public works gave or caused to be given the notice required by law to each proprietor of property assessed and therein named, and that "the parties hereinafter named" (meaning thereby your orator among others) "for more than thirty days neglected or refused to pay the amount assessed against his or their property as aforesaid," now your orator charges that the same is not true in fact, but that your orator was not allowed the time of the legal notification of said assessment for thirty days; but that the notification of said assessment by the board of public works bears date the 29th day of August, 1872, and that the same was not served upon your orator until the 31st day of August, 1872, and that within two days thereafter, to wit, on the second day of September, 1872, the said certificate of indebtedness was issued, upon
10 which it is intended to sell said property, notwithstanding the third section of the act prescribing the mode of assessments and for the collection thereof, dated as approved August 10th, 1871, was printed on the said official notification of assessment, thereby giving your orator notice that if he should neglect or refuse to pay the amount assessed against his property "after the expiration of thirty days, the said board of public works shall immediately thereafter issue certificates of indebtedness against the property assessed"; and your orator charges that said certificate was illegally issued, and is therefore invalid and not a lien upon his property aforesaid, as will more fully appear by reference to said notification of assessment with the 3rd section of said law attached, signed by George W. Beall, superintendent of assessments, herewith filed, marked Exhibit No. 2, and prayed to be taken as part of this bill of complaint, and also a copy of the stub of said certificate herewith, also marked Compl't's Exh't No. 3, and part of this bill of complaint.

And your orator further charges that his said lot so advertised to be sold is situated on New York avenue, near 12th street, northwest, and that the assessment thereon, stated in said notification thereof to be at the rate of $\$10.24\frac{60}{100}$ per front foot, exclusive of charges for water and sewer services, which made the total charge about 11.82 cents per front foot, is excessive and fraudulent, as your orator is informed and believes, the same being proportioned upon an average of pretended cost of
11 improvements on New York avenue from 9th to 15th streets, as your orator was officially informed, and therefore charges; and further that statements of the cost of said special improvements have been made by said board of public works differing from each other, and the same are unreliable and greatly in excess of the appropriation.

Your orator charges that the total cost of street and sewers of New

York avenue from 9th to 15th streets, as per official table of expenditures, was $121,471.84, to which without authority of law was added a charge of 5 per cent., or $4,801.42, for general expenses, making a total of $126,273.26. Within this aggregate is a charge of $6,599.10, made, as your orator is informed, believes, and charges, for undoing and doing over again work which had been already done, the cost of which was properly chargeable, if at all, to the general fund, and was improperly charged to the aggregate of which your orator's assessment represents a part.

Your orator further charges that the contract authorized the payment of thirty cents only per square yard, while forty cents was charged for grading the same, 6541¼ yards of grading, amounting to $654.15, which should be deducted from said amount, as should also the sum for the two feet of grading which was included in the contract price for the concrete pavement, the amount of which your orator cannot state. These deductions, which should have been made from the aggregate cost of improvements on New York avenue, amounting to some $12,000, would reduce the aggregate cost thereof to about $114,000.00, as
12 nearly as your orator can ascertain. Your orator has been credibly informed and believes, and therefore charges, that there has been assessed and collected from the United States Government on said improvements on New York avenue, charged to intersecting streets, to the street railway companies and others than the property holders, who are only chargeable with one-third the cost of said improvements, an aggregate sum of $118,000.00 and upwards, or nearly the entire cost of said improvements, and that any collections further made on account thereof of one-fourth the amount charged your orator per linear foot would realize on the whole frontage an amount which added thereto would be largely in excess of the amount for which the work was contracted to be done for and the cost thereof, as stated, and your orator claims that the District government has no right to enforce payment from him for work already paid for.

And your orator charges that he has been credibly informed, and believes, that square 251 has a frontage of 263 $\frac{2}{12}$ feet on New York avenue, whilst only 172 $\frac{6}{12}$ front feet are set down by the board of public works for partitioning out the costs, to the great damage and wrong of your orator, who is thereby compelled to pay a higher rate per linear foot than would have been the case had the property exempted been assessed for its due proportion, and your orator claims that the amount properly assessable to said exempted property should not have been charged to the lot owners of New York avenue, but, if legally exempt, to the general fund of the District.

13 And your orator is credibly informed and believes, and charges, that square 372 has a frontage of 446 feet 1 inch on New York avenue, while it is only assessed for a frontage of 401 $\frac{7}{12}$ feet, the difference being the frontage of a lot said to belong to the District of Columbia 44 $\frac{6}{12}$ feet wide fronting on said avenue, which your orator submits should not have been charged, as he is credibly informed it has been, to the private property owners, but should have been charged to said District.

And your orator charges that the system of assessments adopted by said board of public works was not in accordance with the requirements of law, and the mode of collecting the same was not in accordance with the requirments of law, and that the said William Dennison, Henry T. Blow and J. H. Ketcham, Commissioners of the District of Columbia, in advertising your orator's property for sale and offering the same

at public auction have done him a great wrong and are about to perpetrate against him a wrond for which he can have no adequate remedy at law. His property is valuable and worth much more than the amount of the assessment set forth in said certificate of indebtedness with interest thereon, and yet it is well known that your orator, with others, deem their legal rights invaded by the method adopted in making and assessing for said internal improvements, and the price which said property will bring at such a sale will probably be far below its value. Such a sale will have the effect of clouding your orator's title and do him an irreparable injury.

In consideration whereof, and forasmuch as your orator is rem-
14 *i*diless in the premises, at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature are cognizable and relievable, to the end, therefore, that the said William Dennison, Henry T. Blow, and J. H. Ketcham, commissioners of the District of Columbia, as aforesaid, and their successors in office, and the First National Bank of the city of New York, may respectively full. true, direct, and perfect answers make upon their corporal oaths according to the best of their respective knowledge and belief as to all and singular the matters and charges aforesaid, and that as fully and particularly as if the same were herein again repeated, and that they therein *to* particularly interrogated, and that a decree may be passed prohibiting said defendants from any attempt to sell your orator's property aforesaid under said certificate of indebtedness.

May it please your honors to grant unto your orator the United States writ of injunction, issuing only and under the seal of this honorable court, to be directed to the said William Dennison, Henry T. Blow, and J. H. Ketcham, Commissioners of the District of Columbia, their successors and agents, and to the said First National Bank of the city of New York, restraining them and each of them from selling, or advertising, or attempting to sell, your orator's lot named in said certificate of indebtedness and said advertisement as aforesaid, in square 286, and from all further proceedings whatsoever under said certificate, or to enforce the payment thereof.

And may it please your honors to grant unto your orator the United States writ of subpœna issuing out of and under the seal of this
15 honorable court to be directed to the said William Dennison, Henry T. Blow, and J. H. Ketcham, commissioners of the District of Columbia, and the First National Bank of the city of New York, in the State of New York, commanding them and each of them by a certain day to be named therein, and under a certain penalty, to be and appear before this honorable court, and then and there to answer the premises, and further to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

And your orator prays for all such other and further relief and remedy and process as the nature of his case may require, and your orators will pray, &c.

(Signed) COLUMBUS ALEXANDER.

(Signed) JOS. J. STEWART,
Solicitor.

COUNTY OF WASHINGTON,
District of Columbia, ss:

I, Columbus Alexander, do solemnly swear that I have heard read the foregoing bill subscribed by me and know the contents thereof, and that the facts therein stated upon my personal knowledge are true as

stated, and the facts therein stated upon information and belief I believe to be true.

Sworn to before this day of January, 1875.
(Signed) R. J. MEIGS,
Clerk Supreme Court D. C.
By R. J. MEIGS, JR., *Ass't. Clk.*

Bill for injunction filed Jan. 5th, 1875.

Ordered this 5th day of January, 1875, that an injunction be issued, restraining the defendants and others, as prayed in the foregoing bill of complaint.

16 COMPLAINANT'S EXHIBIT A.

Notice.

Sale of real estate in the District of Columbia at public auction for the amounts due for special improvements thereon.

Whereas an act of Congress approved June 20, 1874, entitled "an act to provide a government for the District of Columbia and for other purposes," provides that the Commissioners of the District of Columbia shall, until otherwise provided by law, exercise all the power and authority lawfully vested at the time of the passage of said act in the governor or the board of public works of said District, except as in said act limited.

And whereas under and by virtue of an act of Congress approved February 21st, 1871, entitled "an act to provide a government for the District of Columbia," and of an act of the legislative assembly of the District of Columbia, approved August 10, 1871, entitled "an act prescribing the mode of assessment for special improvements, and providing for the collection thereof," as amended by act of said legislative assembly, approved August 23, 1871, entitled "an act amendatory of an act entitled 'an act prescribing the mode of assessment, and providing for the collection thereof,'" the board of public works filed in the office thereof a statement of the cost of certain completed improvements referred to in section 37 of said act of Congress approved February 21, 1872, and immediately thereafter made an assessment based upon said statement as provided for in said section of said act.

17 And whereas, among said assessments were assessments against property hereinafter named.

And whereas the board of public works gave or caused to be given, as required by the second section of the act of assembly, approved August 10, 1871, notice to each proprietor of property adjoining or specially benefited by said improvements of the amount so as aforesaid assessed against the same, and the parties hereinafter named for more than thirty days neglected or refused to pay the amount assessed against his or their property as aforesaid.

And whereas, in consequence of such refusal, the said board of public works issued the following certificates of indebtedness at the date hereafter mentioned against said property, as required by said act of the legislative assembly, to wit:

Square.

H. H. Dodge et al.:

222. Sub. 4, of John Davidson's subdivision. September 2, 1872..... ..... $310 97

Francis J. Chapman:

223. Sub. 3, of John Davidson's subdivision. September 2, 1872 ..... 310 97

W. H. Ward and W. B. Webb, trustees:

286. Sub. 14, of Moore's subdivision. September 2, 1872..... 286 92

Columbus Alexander:

286. Part 2, beginning at a point of New York avenue 14 feet 4 inches westerly from the southeast corner of said lot, thence westerly with the line of New York avenue 14 feet 4 inches, thence northerly by parallel lines of that width to rear of said lot. September 2, 1872..... 170 36

John C. Harkness:

373. Sub. B, of J. C. Harkness' subdivision. September, 1872 ..... 206 65

18 John C. Harkness:

373. Sub. C, J. C. Harkness' subdivision. September 2, 1872 ..... $223 92

John C. Harkness:

373. Sub. D, J. C. Harkness' subdivision. September 2, 1872. 212 63

J. C. Kennedy, trustee, S. A. Bradley:

373. Sub. 24, John Davidson's subdivision. September 2, 1872. 257 02

James L. Edwards:

321. Part 3, being the north 27 feet of said lot by the depth thereof. August 12, 1872 ..... 129 24

Alexander Adamson:

321. Part 5, being the south 23 feet of said lot by the depth thereof. August 12, 1872 ..... 102 22

George H. Plant:

222. Sub. 8, of John Davidson's subdivision. November 12, 1872 ..... 900 10

Charles Wilkes:

221. Part 13, being the north 53 feet 8½ inches of said lot by the depth thereof. September 18, 1872..... 209 38

William H. Philip:

167. Part of 24, being the south 22 24-100 feet of said lot by the depth thereof. September 18, 1872..... 83 20

William H. Phillip:

167. Part 1, being the north 5 26-100 feet of said lot, by the depth thereof. September 18, 1872..... 19 36

And whereas more than one year has lapsed since the said certificates were issued, and the same remain unpaid; and whereas the First
19 National Bank of the city of New York claims to be the holder of said certificates, and has applied to the undersigned to sell said lots or property:

Now, therefore, notice is hereby given that, agreeably to the aforesaid provisions of law, said lots or property will be severally sold in front thereof, at public auction for cash to the highest bidder, on the 5th day of January, A. D. 1875, between the hours of 12 m. and 5 p. m. of said

day, for the payment of said certificates and interest thereon at the rate of ten per centum per annum from the date thereof, as provided by said enactment of Congress and of said legislative assembly.

(Signed) W. DENNISON,
HENRY T. BLOW,
J. H. KETCHAM,
Commissioners of the District of Columbia.

COMPLAINANT'S EXHIBIT No. 2.

(Book 1, folio 117.)

[Office of the Commissioners District of Columbia, clerk in charge of special assessments, room No. 6, second floor, Columbia building, 4½ street.]

WASHINGTON, D. C., *August* 29, 1872.

COLUMBUS ALEXANDER:

You are hereby notified that of lot No. 2, square No. 286, in Wash' City, has been assessed for special improvements, said lot fronting 14.5 feet on N. Y. Ave., 9th to 15.

(Duplicate.)

	Rate per front foot.	
Carriageway and footway	$10 24.69	$147 72
Water services		10 50
Sewer services		
Main sewer		12 14
		170 36

Received payment.

Clerk in Charge Special Assessments.

[Extract from "An act prescribing the mode of assessments for special improvements and providing for the collection thereof," approved August 10, 1871.]

SEC. 3. And be it further enacted, That if any person or persons, notified as aforesaid, shall neglect or refuse to pay the amount assessed against his or their property, as aforesaid, after the expiration of thirty days, the said board of public works shall immediately thereafter issue certificates of indebtedness against the property assessed, as aforesaid, which certificates shall bear interest until paid, at the rate of ten per centum per annum; and until paid the assessment and certificate shall remain and be a lien upon the property on or against which they shall have been issued; and if the said assessment shall not be paid within one year, the said board shall, upon the application of the holder of the certificate of indebtedness, proceed to sell the property against which the assessment and the certificate exists, or so much thereof as may be necessary to pay said assessment; such sales to be first duly advertised daily for three successive weeks, in the regular issue of some newspaper published in the District of Columbia, and to be made by said board, at public auction to the highest bidder; and a deed shall be given by the governor, countersigned by the secretary of the District of Columbia,

which deed shall be deemed and held to be a good and perfect title to any property bought at any such sale hereby authorized: Provided, That the owner of such real estate shall have the right to redeem the property so sold, by paying the amount of the purchase money, and twenty per centum (per annum) thereon, within two years from the date of sale.

The provisions of these laws will be carried out if not complied with.

GEORGE W. BEALL,
Clerk in charge of Special Assessments.

N. B.—If this property no longer belongs to you please direct this circular to the present owner, or return it to this office, with the name of the present owner.

Payments to be made at this office. Office hours from 9 a. m. to 3 p. m.

20 COMPLAINANT'S EXHIBIT No. 3.

($170.36 $\frac{}{100}$.)

September 2nd, 1872.
Issued to
Lot No. , p't of 2.
Square No. 286.
Street, N. Y. ave., bet. 9 & 15.
No. 703.
Stub of certificate.

21 In the supreme court of the District of Columbia. In equity.

COLUMBUS ALEXANDER
vs.
WILLIAM DENNISON, HENRY T. BLOW, AND J. H. Ketcham, Commissioners of the District of Columbia, and the First National Bank of the city of New York.

To the supreme court of the District of Columbia, sitting in equity:

The joint answer of William Dennison, Henry T. Blow, and J. H. Ketcham to the bill of complaint exhibited against them in the above-entitled cause.

These respondents answer as follows:

1. We admit that the complainant is a citizen of the United States, resident in the District of Columbia, and that he is the owner of certain real estate therein named known as part of lot 2 of square 286, as more particularly described in said bill of complaint; and that these defendants, as Commissioners of the District, advertised said lot for sale on the application of the First National Bank of New York, claiming to be the holder of a certain certificate of indebtedness issued by the late board of public works of said District for $170.36, bearing interest at ten per cent. per annum from September 2nd, 1872, which certificate purports to be a lien on said property for non payment of an assessment thereon for special improvements by said board of public works, and for the
22 enforcement of which lien we advertised said lot at public auction on January 5th, 1875.

2. Farther answering touching this matter, we say that we are informed and believe that said certificate was issued against said property by said board of public works, and that said First National Bank of New York is the holder thereof. We say, also, that it is true that said bank did request that said property should be sold by us in the manner alleged in said advertisements. And further answering, we say that at the time of filing of said bill of complaint, William Dennison, Henry T. Blow, and J. H. Ketcham were Commissioners of the District of Columbia, but since said date said Henry T. Blow has resigned said office and the vacancy thus created has been filled by the appointment of S. Ledyard Phelps, who is now discharging the duties of said office of one of said Commissioners.

We have no personal knowledge upon the subject, but upon information and belief we deny that, as alleged in said bill of complaint, said complainant "was not allowed the time of legal notification of said assessment for thirty days." We are informed and believe that it is true that notice to the complainant was issued on the 29th day of August, 1872, and that it was not served until August 31st, 1872, and that the certificate bears date September 2nd, 1872. But, upon information and belief, we aver that said certificate did not pass out of the hands of the late board of public works until more than thirty days had elapsed
23 after the service of said notice upon the complainant; and that it was after the lapse of more than said period of thirty days that said First National Bank of New York (hereinafter for brevity styled the New York Bank) became the holder thereof; and that although during the intervening period between notice to him and sale of the certificate the complainant had a full and fair opportunity to pay said assessment, yet he at no time offered or expressed a willingness so to do, but on the contrary, he and others began proceedings to prevent the issuing of said certificate.

4. We admit that said property of complainant so advertised to be sold is situated on New York avenue near 12th street northwest; and, upon information and belief, we admit that the assessment thereon was stated in the notification therefor to be at the rate of $10.24 $\frac{69}{100}$ per front foot, exclusive of charges for water and sewer service, making the total charge about $11.82 per front foot. We have no personal knowledge upon the subject, and had no connection with the municipal affairs of the District of Columbia until July, 1874, and we are non-residents of said District; and we have knowledge of no facts leading us to believe that said charge is, as alleged in said bill, excessive and fraudulent. Therefore we deny said allegation. We have no knowledge that different statements of the cost of said improvements were made by said board of public works, and we have no knowledge as to the unreliability of any such statements by said board.

5. Touching the statement of cost and expenditure on which
24 said assessments were made, we have no personal knowledge, but we are informed and believe that in August, 1872, a statement of said expenditure incurred on New York avenue from 9th street to 15th street was made in the office of the board of public works, as a basis for assessment, amounting to $132,486.52, to which was added afterwards an item of $11.49, making $132,498.01; that subsequently to the assessment being made the sum of $786.30 was added to the statement of expenditures, but is not charged in the statement of expenditures; that from said sum of $132,498.01 deductions were made as follows: Appropriation by Congress, $14,939.45; one half of intersections charged to lateral streets, $19,315.97; charged to streets and railroads, $2,214.40;

making a total deduction of 36,469.82, and leaving a balance of $96,028.19; to which a charge of five per cent., amounting to 4,801.42, making the sum total of $100,829.61, of which one third part, or $33,609.87, was collectible from the property adjoining and specially benefited by said improvements, together with the sum of $1,320.06 for lateral water service; for lateral sewer service, $897.03; making in all, collectible from property adjoining and specially benefited by said improvement, a sum of $35,826.96.

Touching said charge of five per cent. above mentioned, we admit, upon information and belief, that said charge was made to cover that portion of the expenditures on said improvements including gen-
25 eral and incidental expenses, superintendence, and expenses of like nature. But said amount of percentage was charged only on the amount of expenditures remaining after deducting the Congressional appropriation which had been made and the cost of one-half intersection of lateral streets and the charge against streets railroads. We are also informed and believe that from the expenditure for water service reported as having been made on said improvement the sum of $78.50 was deducted and charged to H street before assessing property on New York avenue, and a like deduction of $21.93 was made as respects the sewer service. We deny each & every statement made in the bill of complaint in conflict with the foregoing allegation which we have just made upon information and belief.

6. As before stated, we have no personal knowledge respecting the making of this improvement, nor have we any information other than that contained in the bill of complaint to the effect that an overcharge for grading was included in the aggregate estimate of expenditures upon which said assessment was made. Therefore we are unable to admit, and consequently we require proof, that deductions should have been made in respect of the overcharges as to grading, which are alleged in said bill.

7. Touching the allegations in said bill of complaint as to payments made by the United States on account of said improvements we are informed, and believe, that according to the official record of an audit in the office of the First Auditor of the Treasury, dated August 2nd,
26 1872, the sum of $192,050.12 is stated as an appropriation by Congress on account of work done in front of United States property, of which the sum of $19,881.05 is for New York avenue, between 9th and 15th streets; of this sum we are informed and believe that the sum of 2,271.22 was carried to the credit of H street, and $2,670.40 to the credit of 1 street, the balance of $14,939.45 being credited to New York avenue, as already stated.

On or about March 4th, 1873, some seven months after assessments against property on New York avenue, including that of the complainant, had been made, a further appropriation was made by the United States, in statement of the account, of which we are informed and believe there was charged on account of New York avenue $137,572.80, deducting from appropriations. Whether or not these two appropriations relieves said property of complainant from the lien created by assessment previously made, and certificate previously issued and in the hands of a third party, who had purchased the same, is a question of law, which we submit for the decision of the court. It is also a question of law to be determined by the court whether the Congressional enactments under which said appropriations were made were designed in any respect to relieve the private property adjoining and specially benefited by said improvement from defraying, like other private property on the line of

an improvement, its share of the cost of such improvement; either if said assessment had already been made, or had not already been made. We do not admit the conclusions of law asserted in the bill of complaint touching this matter, but submit the questions involved for the decision of the court.

27 8. Touching the difference between the actual frontage of the square 251 and the frontage upon the basis of which the assessment aforesaid was made against private property, we are informed and believe that such difference is in consequence of the omission of church property on the computation of said assessment, and that a similar difference in respect of the frontage of square 372 is in consequence of the omission of District property in making the assessment against private property. We are advised that computation of assessment upon the basis of such omission was lawfully made.

9. We have no personal knowledge and no information of illegality in the assessment made by the board of public works upon the property aforesaid of complainant, so far as the mode of collecting the same is concerned; we are advised that it was our duty under the law to advertise said property, as we did, upon the request of the holder of the certificate as aforesaid issued against said property, and we deny that our said proceeding has done or would do the complainant any wrong.

W. DENNISON.
J. H. KETCHAM.

We, William Dennison, Henry T. Blow, and John H. Ketcham, on oath, say that we have read over the foregoing bill of complaint by us subscribed, and know the contents thereof, and that the matters therein as of our own knowledge are true, and those stated upon information and belief we believe to be true.

W. DENNISON.
J. H. KETCHAM.

28 Sworn and subscribed to before me this sixth day of April, 1875.

WM. TINDALL, *J. P.* [L. S.]

EDWARD L. STANTON,
Solicitor for Defendants Wm. Dennison, H. T. Blow, J. H. Ketcham.

Answer of defendants Dennison, Blow, & Ketcham. Filed April 5th, 1875.

29 In circuit court, Dist. of Col. In equity. May term, 1875.

COLUMBUS ALEXANDER
vs.
FIRST NATIONAL BANK OF NEW YORK CITY, William Dennison, et al.

It appearing to the satisfaction of the court here that the defendant, the First National Bank of New York City, having appeared to the subpœna heretofore issued in this case on the 12th January last, has, up to this time, failed to answer the bill of complaint, it is this 5th day of May, 1875, on motion of the solicitor for the complainant, that the bill of complaint filed in this cause be, and same is hereby, taken as confessed by said defendant.

By the court.

A. WYLIE.

Pro confesso vs. 1st Nat'l Bank. Filed May 5, 1875.

In the supreme court of the District of Columbia.

COLUMBUS ALEXANDER
vs.
COM'RS DIST. COLUMBIA, 1ST NAT'L BANK. } Eq. No. 4094.

And now, to wit, May 7th, 1875, it appearing to the court that notice was given for two days to the solicitor of the complainant that this day a motion would be made to vacate or set aside the decree pro confesso against the 1st Nat'l Bank, and no sufficient objection appearing thereto, it is ordered, decreed, and adjudged that said decree pro confesso be set aside, and that the said bank have leave to file its answer this day.

By the court.

A. WYLIE.

30 DISTRICT OF COLUMBIA, *ss:*

Before me appeared William A. Cook, who, on his oath, says that two days ago he sent or mailed a notice to the solicitor in this case for the complainant, that to-day he would, on behalf of the defendant, the 1st Nat'l Bank, move to set aside the decree pro confesso and for leave to file the answer of the bank.

WILLIAM A. COOK.

Sworn and subscribed before me.
May 7, 1875.

R. J. MEIGS, *Clk*,
By R. J. MEIGS,
Ass. Clerk.

Decree setting aside pro confesso vs. def't 1st Nat'l Bank. Filed May 7th, 1875.

31 *Answer of def't 1st Nat'l Bk of N. Y.—Filed May 7, 1875.*

In the supreme court of the District of Columbia.

COLUMBUS ALEXANDER
vs.
WILLIAM DENNISON, HENRY T. BLOW, J. H. Ketcham, Com'rs of D. C., and First National Bank of New York. } Eq. No. 4094. Docket No. 14.

1. It is admitted on information and belief that the complainant is a citizen of the District of Columbia and the owner of a lot of ground, part 2 of square 286, in the city of Washington.

2. It is admitted that William Dennison and J. H. Ketcham are Commissioners of the District of Columbia, Henry T. Blow was one of the Commissioners, but having resigned, his place was filled by Seth Ledyard Phelps. These Commissioners hold their appointment on the nomination of the President of the United States, and confirmation of the Senate, and derive their powers from the act of the Congress of the United States entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874.

It is admitted that said lot of ground was advertised from the 9th day of December, 1874, until the 5th day of January, 1875, for sale, at the request of this defendant, and that it claimed at said time to be the holder of a certificate of indebtedness issued by the late board of public

works of said District against said lot for the sum of $170.36,
32 with interest at the rate of ten per cent. per annum, from the 2nd day of September, 1872; and it is also admitted that said certificate purports to be a lien upon said lot in consequence of the non-payment of an assessment made by the late board of public works against said lot for special improvements made by said board, and that the advertisement of sale was made in consequence of the non-payment of said assessment and certificate, and that a correct copy of the advertisement is attached to complainant's bill as Exhibit A.

3. It is denied that the complainant was not given thirty days' notice of the assessment of said amount against his said lot on account of said improvements made by said board of public works, and that said certificate was issued before the expiration of thirty days from such notice, viz, on the 2nd of Sept., 1872. It is admitted that said certificate is dated on said day, and on information and belief it is admitted that the notice served on said complainant was dated the 29th of August, 1872, and that it was not served until the 31st of August, 1872, and it is admitted that a correct copy of said notice is attached to complainant's bill as Exhibit No. 2.

The facts on information and belief are averred to be as follows, viz: improvements were made by the board of public works in connection with the said lot and adjoining the same and other lots situated
33 in and along New York avenue between 9th & 15th streets, of a nature to benefit said lot (as well as others), and by which it was intended by said board said lot should be benefited, said improvements consisting of grading and paving of said avenue, laying and repairing the footwalks thereof, and other matters.

That said improvements being completed, the said board filed in its office a statement of the cost thereof, and immediately thereafter caused the notice aforesaid to be served on the complainant. That as a mere clerical act the certificate against the lot aforesaid was filled up on the 2nd of September, 1872, in the office of George W. Beall, superintendent of assessments, and as a matter of convenience, being two days after the notice to the complainant, but said certificate was not issued but remained in said office and under the control of said board for more than thirty days after the notice served on said complainant. And on personal knowledge it is aver'ed that it was not until the 14th of November, 1872, the same was issued and passed into the possession of this defendant as bona fide purchasers thereof for valuable consideration, without notice of any objection thereto or pretended error therein; so that for upwards of thirty days from the date of notice to him, the complainant had full and fair opportunity to pay the amount of said assessment and certificate. And on information and belief it is aver'ed that the
34 complainant intentionally and deliberately neglected and refused to pay said assessment for more than thirty days after notice as aforesaid to him. And that he openly and repeatedly declared he would not pay the same, and that the allegation of the complainant's bill that he was not allowed thirty days in which to pay assessment after notice thereof is a mere pretence and evasion to avoid the payment of the same, having no foundation in fact.

On information and belief it is further averred that on or about the 30th day of September, 1872, with others, he filed a bill in this court viz, No. 2924 equity, to restrain the District of Columbia from issuing certificates of indebtedness for the improvements aforesaid in connection with his lot aforesaid, as will more fully appear by reference to said bill on file in the clerk's office of said court, and the papers connected

with said case and equity docket No. 12, page 54, & the record of said court and said bill with all the papers of the case and the record thereof and the decree and decision of the court in general term dissolving the restraining order previously granted and refusing an injunction is made part hereof as if fully set out herein, and as an exhibit hereto and for all the purpose for which the same can be in any way used or considered. And it is aver'ed that in the 13th paragraph of said bill the complainant, with others, distinctly stated that said certificate was then "prepared" and would be issued at the expiration of thirty days from the 31st of August without any pretence that it would be prematurely issued. And it is denied that said certificate was illegally
35 issued and invalid, and that it is not a lien within the meaning and purpose of the act of the legislative assembly of the District of Columbia, entitled "An act prescribing the mode of assessment for special improvements and providing for the collection thereof," approved Aug. 10, 1871.

4. The situation of the lot of the complainant is admitted to be as alleged on New York avenue, near 12th street northwest, and that the assessment against the same was set forth in said notice @ 10.24\frac{1}{100}$ per front foot for improvements exclusive of water and sewer services, but these latter were not made per front foot but as an aggregate of actual cost.

It is denied on information and belief that said charges are excessive or in any respect fraudulent, and that they were based or proportioned on an average apprehended cost of improvements on said avenue from 9th to 15th streets, and it is denied on information & belief that the complainant was so officially informed. And it is further denied on information and belief that the statements of the costs of said improvements have been made differing from each other, and that the same are unreliable. It is admitted on information and belief that the cost is in excess of specific appropriations, and it is aver'ed that the cost under the acts of Congress entitled "An act to provide a government for the District of Columbia," approved Feb'y 21, 1871, was expected to be in excess of appropriations in this and all cases to the extent of one-third thereof if not more; but it is denied that said cost was in excess
36 of appropriations applicable thereto by the legislation of the District.

5. It is denied on information and belief that the total cost of streets and sewers on New York avenue from 9th to 15th streets was $121,147.84, and that without authority of law there was added a charge of 5 % or $4,801.42, for general expenses, and also $6,599.10 for doing work again which should have been charged to the general fund. And it is aver'ed on information and belief that the various items making up the aggregate charge was correct and no more than one third of the true and actual necessary cost, viz, one-third of the entire amount was charged against individual owners of property benefited by said improvements, and only a due proportion thereof assessed against the complainant and embraced in the certificate issued against his lot.

6. It is denied upon information and belief that forty cents was improperly charged for grading, and that the price of 2 feet of grading should be deducted from the amount assessed against the plaintiff's lot, and that by such deduction and otherwise the aggregate cost can be reduced $114,000.

7. It is denied on information and belief that there has been assessed and collected from the United States Government on account of said improvements on said New York avenue $118,000.00, or nearly the en-

tire cost of said improvements, and that by such assessments and
37 payments or in any other way the cost of the work has been reduced to the contract price, and that all the said improvements have been paid for, so that one-third of the cost cannot be collected from the owners of property adjoining and benefited by said improvements, and the amount or proportion assessed against the plaintiff's lot be enforced against the same as provided in the act of the legislative assembly entitled "An act prescribing the mode of assessment for special improvements and providing for the collection thereof," approved August 10th, 1871.

8. It is denied on information and belief the sq. 251 has a frontage of $263\frac{2}{12}$ feet on New York avenue subject to an assessment of one-third of the cost of improvements, whilst only $172\frac{8}{12}$ feet front have been assessed for the cost of said improvements, and that thereby great damages and wrong has been done the complainant.

And it is further denied that part of the assessment made against the lot of the complainant should have been charged to the general fund, and that the assessment against his said lot and the amount embraced in said certificate has been increased by an omission to assess one-third against what is called exempt property, and it is aver'ed that the difference between $263\frac{2}{12}$ feet and $172\frac{8}{12}$ on said sq. 251 arises from the fact that on said square existed at the time of said assessment church prop-
erty, and that omitting to make an assessment against said prop-
38 erty was proper in itself and cannot now be made a matter of objection by the complainant so as to reduce the assessment made against his in sq. 286; and it is aver'ed that all these matters are trivial & not of sufficient importance if true to engage the attention of this court & to entitle the plaintiff to the relief he seeks.

It is on information and belief denied that in square 372 there has been an omission to assess one-third of the cost of improvements aforesaid against the 446 front feet liable thereto, and that it was a mistake to make the assessment against $401\frac{2}{12}$ ft. they omitted $44\frac{8}{12}$ belonging to the District of Columbia; and it is averred that the property of said District under the provision of the act of Feb. 21, 1871, and of the pertinent laws of the legislative assembly, was not subject to an assessment for the cost of improvement or any part thereof, and it is denied that one third of the cost of improvement made adjacent to $44\frac{8}{12}$ feet of property owned by said District should have been charged thereto. And it is aver'ed that under the act of Congress entitled "An act to provide a government for the District of Columbia," approved Feb'y 21, 1871, and the act of the legislative assembly of August 10th, 1871, the late board of public of said District had full power to make improvements on said New York avenue in connection with the said lot
of the plaintiffs and other property, and that said improvements
39 were regularly made and assessment of one-third of the cost, thereof properly ascertained and notice thereof issued to various parties, and among others to the complainant, long before any appropriations were made in any respect applicable to any part of New York avenue by the Congress of the United States, and that this defendant became the bona fide purchaser and holder of the certificate issued against the complainant's lot long before any such appropriations were made. And it is further aver'ed that the Congress of the United States by any appropriations made by it neither could or did impair, effect, or take away the right of this defendant to said certificate and its right to sell or cause to be sold the said lot of the complainant for the non-

payment of the certificate in manner provided in the act of August 10, 1871.

And it is further aver'ed that no appropriation was made by the Congress of the United States for the purpose of reducing the amount assessed against the plaintiff's lot as aforesaid, and in the certificate issued as aforesaid, or for the purpose of effecting his liability for the same, and that all such assumptions and pretensions are without any authority of law and intended to enable the complainant to possess, hold, and enjoy the benefits of said improvements without paying
40 any part of the cost thereof whatever, and especially the one-third authorized by the act of Feb'y 21st, 1871, to be assessed against the owner of property adjacent to & benefited by improvements made by the board of public works.

10. It is denied on information and belief that the system of assessment adopted by the board of public works was not in accordance with the requirement of law, and that the mode of collecting is not in accordance with law, and that the Commissioners of the District in advertising the complainant's property have done the complainant a great injury, and that they are about to perpetrate a wrong for which he can have no adequate remedy at law. It is admitted the lot of the complainant is worth more than the tax against it, and it is denied that the proposed sale will have the effect of clouding the title of the complainant, and that irreparable injury would be done him.

11. All and any allegations in said complainant's bill contained not hereinbefore admitted, denied, or explained are hereby denied.

12. And it is aver'ed on information and belief that the complainant has used and enjoyed and still uses and enjoys the benefits of the improvements made in connection with his lot aforesaid, and has done so since about September, 1872, until the present, a period of about 2 years & 8 months, and that by such use and enjoyment and as well as otherwise he is estopped from assailing or disputing the validity
41 of said assessment and certificate. And it is further averred that he has not paid or tendered the payment of any part of said assessment or certificate, nor done any other act or thing entitling him to consideration in relation thereto before this court.

13. And the defendant submits to the honorable court that all the matters in the said complainant's bill mentioned and complained of are matters which may be tried and determined at law & with respect to which the said complainant is not entitled to any relief from a court of equity, and prays that it may have the same benefit of this defense as it had demurred to said complainant's bill for the want of equity therein.

Having fully answered the bill of complaint, this defendant prays that it may be hence dismissed with costs, &c.; and it will pray, &c.

(Signed) SAM'L C. THOMPSON, *Pres't.*
(Signed) GEO. F. BAKER, *Cash.*
(Signed) WILLIAM A. COOK, *Sol'r.*

STATE OF NEW YORK,
City of New York, ss:

We, Samuel C. Thompson, pres't, and George F. Baker, cashier, solemnly swear that we have read the answer by us subscribed and know the contents thereof, and that the facts therein stated upon personal

knowledge are true, and that the facts therein stated on information & belief we believe to be true.

(Signed) SAM'L C. THOMPSON, *Pres't.*
GEO. F. BAKER, *Cash.*

Sworn & subscribed before me.

(Signed) JAS. T. BROWN,
Notary Public New York County.

STATE OF NEW YORK,
City & County of New York, ss:

I, William Walsh, clerk of the city and county of New York, and also clerk of the supreme court for said county & city, being a court of record, do hereby certify that Jas. T. Brown, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city & county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand & affixed the seal of the said court of county the 6 day of May, 1875.

[SEAL N. Y.] (Sign'd) WM. WALSH.

Ans. of def't 1st Nat'l Bank N. Y. Filed May 7, 1875.

42 In sup. court, Dist. of Col. In equity.

COLUMBUS ALEXANDER
vs.
DENNISON, BLOW, FIRST NATIONAL BANK OF New York, &c. } No. 4094. Eq.

Please enter a general replication to answers of the defendants filed in this cause.

JOS. J. STEWART,
Sol'r for Compl't.

General replication, filed June 11th, 1875.

In circuit court, Dist. of Col. In equity.

COLUMBUS ALEXANDER
vs.
THE FIRST NAT'L BANK OF NEW YORK, William Dennison, Com'rs D. C. } No. 4094.

It is hereby agreed that the act of the legislature of the District of Columbia, the published map of the lots and subdivisions of same, on New York avenue from 9th to 15th streets, the published reports of the board of public works for 1872 & 1873, the published answer of the governor of the District to the committee of Congress, with accompanying tables and an official copy or copies of the contract or contracts for the improvement of New York avenue, may be used in evidence by either side in the above-entitled cause, without further proof of the same, under a commission to take testimony.

(Signed) JOS. J. STEWART,
Sol'r for Compl't.
WILLIAM A. COOK,
1st Nat'l Bank.
E. L. STANTON,
Sol. for Commissioners D. C.

Agreement as to testimony. Filed Jul. 13, 1875.

43 Having examined Table XXIV of the report of the board of public works of 1872, purporting to be an itemized statement of the cost of the improvements of New York avenue between 9th & 15th sts. west, I am free to say that I find numerous items to which objections can reasonably be made, from which I select the following examples, viz:

1st. The property-holders of sq. 373, fronting on New York avenue, before the board of public works was installed, had, at their own expense, constructed adequate sewerage for the entire front, which was adopted by the board when it undertook the improvements of New York avenue, and, instead of giving due credit therefor, said property-holders have been assessed the same per front foot as other portions along the line of improvement which required sewerage.

2nd. The grade between 9th & 10th streets, established by previous authority, was adopted by the board, and as nearly all the paving of the sidewalk in front of sq. 373 had been renewed a short time before, all such pavements remained undisturbed, but the curbstones was removed and new curb substituted therefor, and the edge of the pavement made good to do. In this case also no credit is given for the pavement laid at the sole cost of the proprietor, amounting to 178c. per front foot, but, on the contrary, they are charged as if the same had been laid by the board.

3rd. By a condition of contract No. 42, under which the said improvements of N. Y. ave. were made, the old material was to be the property of the contractor, and as far as my personal knowledge extends, this provision, at least, was faithfully complied with. In the itemized Table XXIV I find a charge for removing 985 feet of old curb, @ 16½c. per foot, and for dressing and jointing 985 ft. lineal of old curb, @
44 20c. per foot, and for setting 62 feet of old curb. The old material having, by provision of the contract, been awarded to the contractor, I object to the charges for removing and dressing & jointing old curb, amounting to 36½c. per lin'l foot, or $359\frac{52}{100}$ dol's, and more especially when only 62 ft. lin'l of old curb is claimed to have been reset.

4th. I find there have been charged 6,054½ cubic yards of excavation, @ 40 c. per yard, and 2,881 cubic yards of do. @ 60 c. per y'd: also 6,541½ cubic yards of earth hauled, extra distance, @ 14 c. per yard.

An examination of contract No. 42 will clearly show the price of 320 c. per square y'd for the concreting include 2 feet (in depth) of excavation, and in case of greater depth the same would be paid for @ 30 c. per cubic yard, an advance of 50 per ct. on the price claimed for such work by the board in its communication of June, 1871, to the legislature then in session. From the limited portion of the avenue on which the grade was lowered, and the filling required where the grade was raised, it becomes obvious to me that all claims for excavation beyond the two feet covered by the contract must be an error. I have resided upon New York avenue, between 9th & 10th sts. west, for many years, and have been an observer of all improvements, save one house, erected thereon bet. 9th & 15th sts. west, as also the former and later improvements of said portion of N. Y. ave., and have never seen present stone or rock in quantities to justify any extra charge for excavation thereon either in the cellars or in the avenue itself.

5th. I find also a charge of $6,539\frac{1}{100}$ dol's for change of grade between 14th & 15th streets. I have knowledge of the fact that the avenue between these two streets was filled in considerably above the grade at which it has been completed, and that some of the houses at considerable expense were adapted thereto, and afterwards—whether at the in-

stance of the property holders immediately interested I am not
45 able to say—the grade was reduced to its present status, which is considerable above the original grade. If this expensive chan'was made at the solicitation of property holders immediately interested, I object to the cost being assessed upon those who had no interest therein.

6th. The cost of the improvements in front of the New York avenue church, and also in front of the lot on which the police station is partly located, have been included in the aggregation or sum of the costs of the improvements, and when distributed the line has been shortened by the sum of these two lots to the damage of those holding property between 9th & 15th streets.

7th. After recapitulating every possible expense, whether by contract, extra work, or contingent, there is superadded, in Table XXIV, five per cent. for office expenses, when all such expenses had been most liberally provided for by special appropriations by the legislature.

(Signed) JOHN C. HARKNESS.

Sworn to and subscribed before me this 16 day of January, A. D. 1875.

(Signed) CHAS. P. WEBSTER,
Justice of Peace for Dist. of Columbia.

John C. Harkness' affidavit. Filed Nov. 2nd, 1875.

46 *County of Washington, ss:*

DISTRICT OF COLUMBIA:

I hereby certify that on this sixteenth day of January, 1875, personally appeared before me Adolph Cluss, of the city of Washington, and made oath as follows, to wit:

I have carefully examined the street improvements and sewerage made by and under the late board of public works of the District of Columbia on New York avenue between Niinth and Fifteenth streets N. W.; also the published official records of the same, and in all cases of doubt or importance the records on file in the offices of the District, such as have been pointed out to me through Lieut. Hoxie, the District engineer, under instructions from the Commissioners of the District. Where necessary to arrive at a true understanding I have also resorted to measurements. Reference is made hereafter in all matters relating to the accounts of avenue to the official report of board of public works, transmitted through the governor of the District to the President of the United States, and by him to Congress, as directed by organic act. But for the collections made under Congressional appropriations reference is made to the official publications of the same, contained on pages 397–460 of "Answer of Governor Shepherd to the inquiries of Senator Boutwell, chairman, etc.," under date of Feb'y 28th, 1874; copies of both documents are herewith transmitted, as also diagrams of the street showing the involved improvements, and also the manner in which the contributions from United States relieve the general fund of the District, as well as the burden on the
47 property holders. Wherever reference is made to journal, this refers to record in District surveyor's office.

I have examined the cost, and also the method adopted by the offi- officials of the board in computing the rate at which the adjoining private property was assessed. The method adopted for assessment was as follows: The total cost of the work was first determined, (see table xviii, Rep. B. P. W., 1872,) then the amount to

be charged the United States for frontage of real or constructive reserved places upon the line, at the expensive intersections of the avenue with the streets, was made out by running around these "reserves" lines parallel with their sides, including all the area within five-sixths of the full width of the avenue and streets between building-lines, but where reserved spaces were on both sides of the streets the full width of street was included as payable by United States. These areas are represented upon accompanying diagrams of the street (marked A) by pale red coloring; and are evidently made in a mode so as to relieve, principally but not exclusively, the account of the avenues of most onerous charges resulting from the peculiar plan of the city; next, the amount charged to street railway companies, to intersections of streets, and so on, was ascertained. Both these amounts were added up and deducted from total cost. Five per centum of the rest was computed, and added to that rest for "general expenses." Of the sum thus obtained two-thirds was charged to general fund, and one-third to adjoining property.

Improvements in front of non-taxable property and in front of property held by District.

The cost of improvements in front of property exempt from taxation under existing laws, ($91\frac{4}{12}$ feet of church property on north side of avenue betw. 13th & 14th st's,) also property belonging to the District, (station-house
48 lot, now occupied for mechanical purposes, cor. of 9th st. & N. Y. avenue, $34\frac{10}{12}$ feet frontage,) was assessed on the taxable private property on the line, so that 3,280 feet frontage were made to pay for an actual frontage of $3,406\frac{2}{12}$ f't. In diagram (B) of whole street those cases of frontage omitted in assessment are colored in deep red.

Claimed irregularities.

The carriage-way in front of property on the south side of New York avenue, but nominally on H street, (north side of sq. 252,) has been improved and paid for under the New York avenue contract, but sidewalks and curbing have been measured in the account of H street. The equivalent or drawback for this H street work, done under New York avenue contract, is omitted in New York avenue account; the drawback of $2,271.20 which is accounted for having sole reference to the work to the northeast of Gurley's church.

The western or 13th street frontage of square 287, 50 feet in length, has also been improved under New York avenue contract, and the inadequate sum of $100, or only $2 per front foot, has been credited to New York avenue for that item: (see table xviii, Rep. 1872;) New York avenue being 130 feet, & 13th st. 110 feet wide, the one-sixth assessment which was claimed in the first case @ $\$10\frac{24}{100}$ ought to have been in second case $\$6\frac{43}{100}$ per front foot, or a total of ab't $\$321\frac{50}{100}$.

Time of assessment and collection of Gov't contributions.

I have ascertained the assessment on private property to have been made in August of 1872, (the official record of tables xviii, Rep. B. P. W. 1872, gives, strangely, no date,) and the United States share was collected in installments under dates of Aug. 3rd, 1872 (p. 398, 399 Gov's ans.), Jan'y 10th, 1873 (pp. 440-441 G. A.), and M'ch 14th, 1873 (p. 414 G. A.); however, only
49 the first installment received for frontage of reserves on account of the amount chargeable to adjoining property is accounted for.

A new element introduced in consequence of an appropriation by Cong. for "avenue" work in the city of Wash.

Congress having made on M'ch 3rd, 1873, an appropriation for work on avenues, the amount charged to general fund in statement of Aug., 1872, was transferred, and remeasured for the United States, in the Gov't's account of March 14th, 1873, (p. 414 G. A.), otherwise the original account remained unaltered in principle. A close examination shows that the amount paid by Government under the head of "avenues," as above stated, is exclusively "for work done by the board of public works,"

(see letter signed by the five members of B. P. W., under date of M'ch 14th, 1873, (p. 410 G. A.); further, that no new work was done between August, 1872, the date of the street assessment, and M'ch, 1873, the last date of Government measurements and payments under such, and even if such was done the bills of items show that in the charges to Government no work whatever is included different from that in the account of Aug., 1872.

Cost of work claimed under assessment.

The specified and officially published account of cost of the street and sewers (on involved part of New York avenue) shows a total expenditure, including pay of superintendents (see table xviii, Rep. B. P. W., 1872), of $121,471.84. To this there is added for general expenses, 4,801.42; making a grand total of $126,273.26. This constitutes the extreme limit for money that could be demanded on account of the implied work.

50 Now, in the account of Aug., 1872, from which a rate of assessment of 10.24\frac{69}{100}$ per front foot was deduced, with such minute detail, the government's assessment for frontage of reserves is put down as $17,210.60 (see table xviii, Rep. 1872), while in the final government measurement of M'ch 14th, 1873 (p. 414 G. A.), the board admits to have received up to that date $21,939.45, as the New York avenue share of the Government collections for frontage of reserves between 9th & 15th streets, and the general fund is charged (on table xviii, Rep. 1872) with $\frac{3}{4}$ of $100,829.61, or $67,219.74, whilst there was actually collected from the government on M'ch 14th, 1873 (see G. A., pp. 413 & 414, and also explanatory statement on page of this manuscript marked C), under this head, a sum of $77,088.90. The amount chargeable to intersecting streets, railroad companies, &c., $8,233 (table xviii), is not disputed. The account, taking the statements of the board throughout, stands therefore as follows:

Assessment of private property based upon incorrectly assumed figures as to am't due by gov't.

Charges to miscellaneous sources not disputed.

Assessments based upon corrected figures admitted even by board reports.

Total cost, including charges for general expenses		$126,273 76
Collected from United States—		
For work assessed in front of reserves	21,939 45	
" " transferred from general fund	77,088 83	
" charges to R. R. Co., intersecting streets, &c.	8,233 00	
		107,261 28
Leaves collectable from adjoining private property		19,012 48

Which, divided by 3,280, as number of front feet, claimed by the board (table xviii), gives a rate of $5.80 per front foot, and not of 10.24\frac{69}{100}$, as erroneously deduced and charged to property holders.

But the corrected rate obtained by merely revising such items
51 of accounts as are in direct conflict with actually admitted payments from government for New York avenue is far from being correct, to wit:

Blunders no proper charge to improvement accounts.

In summing up (table xxiv, Rep. 1872) $121,471.84 as total cost, there is included a sum of 6,509.10, "for work done and *and* afterwards changed, and grade modified to suit wishes of the property holders," as is alleged in marginal note. This occurred at intersection of 14th str', and is no proper item in the account of expenditures of the whole street, which was neither benefited or improved by expensive work done and changed back again. It would rather be a special charge to the immediately interested property holders who "wished," or to general fund.

Further, the sum of $4,801.42 charged for general expenses is incon-

Cost of superintendence, &c., charged twice.

gruous, since the pay of superintendents for street ($944, on table xxiv; see adjoined paper "D"), and also charges under superintendent of sewers, $133.13 (see table xviii), are directly charged to street, all heavy bills for extra work, such as are taken into account in providing for contingencies, before work is commenced, are charged up, and the office expenses of board were provided for by special appropriations of the legislature, covering the period when this improvement was planned and executed, namely, $67,000, 35,000—$102,000. (Compare comptroller's expend' account, p. 76 gov's ans.)

Further, a careful examination of the account of New York avenue, as well as of the intersecting streets, proves that much higher amounts have been chargeable and paid towards the expense of this avenue, for frontage of government reservations than are shown on the accounts, and that therefore heavy amounts of public money collected have not been accounted for, to wit:

52 Public moneys collected, but not credited to the works upon which they are obtained.

For two reserves on north and south side of New York avenue, west of 13th street, the following sums have been collected:

For reservation corner New York avenue and "at the church" (see G. A., p. 398–399), June, 1872	$7,989
For New York avenue, 13th and H streets (G. A., p. 449), January, 1873	6,501
	$14,490

These reserves are bounded by New York avenue, by 13th and by H sts., as will be noticed by reference to diagrams. The published official records and also the "journal" in the district surveyor's office, containing the assessments based on these several street accounts, account for no more than the following credits:

(P. 414 G. A.) To New York avenue	$5,717 70
(Table XLI, Sep., 1872, and Surveyor's Journal.) To H street	2,271 20
	$7,988 90

A sum of $6,501.10 is therefore not accounted for, and the diagram (A) illustrates by the relative size of areas covered, in avenue and in streets, by government appropriations, that such credit has been principally withheld from New York avenue, which has paid for the whole large intersection of 13th street, exclusive of a drawback of $1,270 charged to Thirteenth street (table xviii, Rep. 1872, and journal of assessments surveyor's office).

(On the margin:) Reference is made to adjoined recapitulation marked E.

53 For two reserves on New York avenue, between 10th & 12th sts., the following sums have been collected from U. States:

Reserve co. N. Y. ave. & 12th str. (page 399, G. A.)	$11,141 75
N. Y. ave., 10th and I streets (p. 441, G. A.)	$19,897 00
	$31,038 75

These reserves are bounded (see diagrams) by N. Y. ave., 10th, 11th, 12th, and I streets. Credits have been found on the several street accounts:

N. Y. ave. for 10th str. reservation (p. 414, G. A.)..	$7,750 40	
N. Y. ave. for 12th str. reservation (p. 14 gov's ans. and page 4 of journal).....	8,471 35	
I str., north side of (table xii, Rep. 1872), and journal	2,670 40	
Twelfth street res. (p. 38 journal).....	3,520 46	
Tenth str. & I str. (journal).....	1,414 00	
	$23,826 61	
This leaves unaccounted for again.....		$7,212 14
Add sum not accounted for on 13th str. reservation as above		6,501 10
Total sum unaccounted for N. Y. ave. reserves.....		$13,713 24

This, of course, is exclusive of amount duly accounted for, and shows virtual contributions of government to N. Y. ave. improvements to have been, in toto, as follows (this being merely a recapitulation of what has been followed up above, another reference to records was left off so as not to encumber the statement).

(On the margin:) Reference is made to adjoined recapitulation, marked E.

Under head of avenues.....		77,088 83
Frontage of reserves west of 13th street.....		5,717 70
" " " between 10th & 12th sts.	7,750.40 / 8,471.35	16,221 75
Amount rec'd for N. Y. ave. res's and unaccounted for....		13,713 24
		112,741 52
54		112,741 52
R. R. companies & intersecting streets are charged..		8,233 00
Actually assessed for N. Y. ave. imp's aside from priv' property		120,974 52

instead of $92,663.31 as assumed in assessment of 1872, so that even if all the charges of board were proper to their full extent, but $5,298.74 would remain collectable from private property instead of $33,609.87 as assumed in assessment, and giving a rate of 1.62 per front foot instead of $10.24. An exact apportionment may somewhat alter these last figures, but not materially, since a small amount of unaccounted for money may be found to be due intersecting streets after audit.

The results arrived at by careful computations and examinations of all accessible records are not at all strange, to wit:

Pennsylvania ave., betw. 15th st. west & Geo'town, strikes the numbered and lettered streets of the city under the same angle as New York avenue, and small reserves charged to United States are therefore formed strictly analogous to both cases. Both avenues are 130 feet wide between building lines, but Pennsylvania ave. has a carriage-way 90 feet in width, paved for some squares with concrete costing $3.20 per sq. yard, but mostly with wood blocks costing $3.50 per yard, whilst New York avenue has two carriage-ways only 58 feet wide in the aggregate, and paved with concrete costing in part $3, but mostly $3.20 per yard. All the other conditions are similar, except that to the street account of N. Y. ave. there is about seven per cent. added for tile sewers, which is

55 not the case with Penn. ave., which was sewered before the date of these late improvements. This item does not by far balance the more costly material and wide carriage-ways which form the expensive part of the improvements. Still the property-holders on West Penn'a ave. are assessed minutely at $4.40\frac{53}{100}$, whilst the less valuable property on the adjoining New York avenue is assessed for $\$10.24\frac{69}{100}$ per front foot, which certainly is an unwarranted discrepancy.

And the said Adolph Cluss makes oath that he has carefully examined as above the accessible sources of official information, and that the foregoing statement is true to the best of his knowledge & belief.

(Signed) ADOLF CLUSS.

Sworn & subscribed before me, the undersigned, this 16 day of January, 1875.

[SEAL.] (Signed) JAMES DONALDSON,
Justice of the Peace.

Affidavit Adolf Cluss. Filed November 2nd, 1875.

56 C.

Computation of payments under the head of avenues for the space between 9th & 15th str. on New York avenue.

This we do by taking the whole street account on page 413 & 414 of Gov's ans. and separating in a second column those items relating to section of avenue to which we have reference.

				Account as reported by A. C. for N. Y. ave., between 9th & 15th streets.
New York avenue, 9th to 15th streets n. w			9,656 40	9,656 40
			2,414 10	2,414 10
			14,058	14,058
			5,796	5,796
			12,774 60	12,774 60
			89,603 20	89,603 20
			3,270 50	3,270 50
			21,600 00	
"	Seventh str. to N. Cap. st		4,752 00	
			18,822 00	
			9,600 00	
			21,822 10	
			41,430	
"	Seventeenth to Eighteenth sts		2,062 50	
			2,916	
			11,590 40	
			272,131 80	137,572 80
Deduct amount appr. June 10th, 1872—				
At Gurley's church	5,717 70	5,717 70		
" 12th street	8,471 35	8,471 35		
" 10th "	750 40	750 40		
	5,789 67			
	5,968 10			
Amount appro. Jan. 1873	1,883 50			
	7,000 00	7,000		
			35,582 72	21,939 45
			236,551 08	115,633 35
Less one third			78,850 36	38,544 52
Acc't of whole street			157,700 72	
Account of section between 9th & 15th sts				877,088 83

Which amount was collected on M'ch 18, 1873. (See Gov's ans., page 416.)

Explanatory paper.

NOTE.—This explanatory paper was necessary, because in the Government accounts the whole avenue, from North Capitol st. to 18th str. west, has been treated as a whole, whilst the assessment on private property is made for the different sections independent of each other. Luckily the elements are contained in the records which admitted a parting of account, which is here done, following strictly the arithmetical operations of original.

57 D.

Expenditures for superintendence, and contingent expenses as charged in street account o New York avenue between 9th & 10th str.

[Extract from record in the office of the Dist. surveyor.]

Date of expenditure.	Number of voucher.		
1871.			
Sept. 14th.	74	G. W. Martinet, by B. D. Carpenter, for profiles & levels	$6 00
Nov. 19th.	470	T. Thompson, supt. 9th–15th st	75 00
Dec. 5th.	787	" " " " " "	75 00
" 23rd.	1009	" " " " " " in full	84 00
1872.			
Jan. 23rd.	220	A. L. Nesmith " to Dec. 31st	39 00
Febr. 7th.	380	" " " " for Janly 7	81 00
M'ch. 13th.	960	" " " " for Feb'y	75 00
Apr. 4th.	1067	L. P. Robertson, supt., for March	32 00
" 4th.	1078	E. Lucas, " " "	6 00
" 5th.	1080	J. H. Forsyth, for services " "	21 67
" 19th.	1219	A. L. Nesmith, superintendent, " "	78 00
May 9th.	1422	" " " " for April	78 00
June 3rd.	1711	J. C. Lang, plats 10th–12th sts	5 80
" "		" " " 9th–10th sts	2 90
" "	1712	A. L. Nesmith, superintendent, for May	81 00
Jul. 2nd.	2055	H. Naler, supt., for June	100 00
" 5th.	2084	H. A. Dupray " " "	16 63
" 16th.	2263	J. C. Lang, plat from 9th to 12th streets	3 00
Aug. 8th.	2657	H. Naler, supt., 9th to 15th str., for July	84 00
			$944 00

NOTE.—The above constitutes the items for the sum of $944, inserted on table XXIV of rep't of 1872, under head of superintendents.

58 E.

Recapitulation showing collections and claims by Board of Public Works (independent of approp's under 4,000,000 loan), based upon account of 121,471.84.—*(See table XVIII, Rep.* 1872.)

Page 398, 399 Gov. ans.	Collected from U. S. Gov't June, 1872, reserve, cor. N. Y. ave. & church	7,989 00		
	" " " " " & 12th street	11,141 75		
	" " " " " and 10th "	750 40		
Page 440, 441 Gov. ans.	Collected from U. S. on Jan. 10th, 1873, New York ave., 13th, and H str.	6,501		
	" " " 10th " I str.	19,146		
Pp. 413, 414 Gov's ans.	Collected from U. S. Gov't, M'ch 3rd, '73, under head of "Avenue" (two-third payment.)	77,088 83		
			122,616 98	
	Of this must be deducted credits given to adjoining streets for work of reserves outside of N. Y. ave. line.			
From surveyor's official records.	H str., between 13th & 14th sts	2,271 20		
	I str. " 11th & 13th sts	2,670 40		
	10th street account	1,414 00		
	2 street "	3,520 46		
			9,876 06	
	This leaves net to credit of N. Y. avenue			112,740 92
Table XVIII Rep. 1872.	Charged to intersecting streets aside of Government reserves			6,018 60
	Charged to street railroads			2,214 40
	" " private property			33,609 57
	Total charges and claims			$154,583 69

In other words, a sum of 121,471.84 on one side of the ledger is balanced by a sum of 154,583.69! This, of course, is independent of all other irregularities.

59 Supreme court of the District of Columbia. December, 1875 Special term.

COLUMBUS ALEXANDER *vs.* DISTRICT OF COLUMBIA. } 4094. Eq. doc. 14.

This cause coming on to be heard, counsel of respective parties not appearing, and E. L. Stanton representing to the court that he understood the respective counsel to be agreed thereto, it is ordered this 15 Dec., 1875, that the cause be and is hereby referred to the general term of this court, there to be heard in the first instance.

By the court.

[SEAL.] (Signed) A. WYLIE.

Referring cause to the court in gen'l term. Filed Dec. 15th, 1875.

60 In the supreme court of the District of Columbia. March 17, 1876.

ALEXANDER *vs.* DENNISON ET AL. } No. 4094. Equity.

It is hereby agreed that this cause shall stand with the same effect as though it had been received so as to make Seth Ledyard Phelps, one of the Commissioners of the said District, a party defendant in the place of defendant Henry T. Blow, resigned, and that the answer heretofore

filed for the defendant Dennison, Ketcham & Blow shall stand as though said defendant Phelps had answered to the same effect.

(Signed) JOS. I. STEWART,
Sol'r for Compl't.
EDWIN L. STANTON,
Sol'r for Def'ts Commissioners D. C.

Agreement as to bill & answer. Filed March 18th, 1876.

60 In the supreme of the District of Columbia. In equity.

COLUMBUS ALEXANDER
vs.
WILLIAM DENNISON, HENRY T. BLOW, & J. H. Ketcham, Commissioners of the District of Columbia, and the First National Bank of New York. } No. 4094.

The bill, answer, and proceedings in the above entitled cause having been read, heard, and duly considered, it is thereupon, this 7th day of April, 1877, by authority of this court, adjudged, ordered, and decreed that the prayer of the bill of complaint be, and the same is hereby, allowed; and that an injunction be issued in accordance therewith, and said injunction be made permanent.

It is hereby further decreed that the defendants pay the complainant his costs of suit.

By order of the court.

D. K. CARTTER,
Chief Justice.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that the foregoing writings are true copies of originals on file and of record in the clerk's office of the supreme court of the District of Columbia, in the above entitled cause, which originals together constitute the record of the proceedings of the said court in the said cause.

Witness my hand and the seal of said court, April 27, 1877.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 359. William Dennison et al., Commissioners of the District of Columbia, & The First National Bank of the city of New York, appellants, vs. Columbus Alexander. Dist. of Columbia sup. court. Filed 22d November, 1877.